

REMARKS

Claims 1-21 are pending. The Examiner rejects claims 1-21 under 35 U.S.C. 102(e) as being anticipated by Krueger et al. (U.S. Patent No. 5,996,022). Claims 1-21 remain in the case. Applicants amend claims 1, 10, 14, 18, 19, and 20. Applicants add no new matter and request reconsideration.

Claim Rejections Under § 102(e)

Claims 1-21 are rejected under 35 USC 102(e) as being anticipated by Krueger. The Applicants respectfully traverse the Examiner's rejection.

Claim 6 recites a *monitoring means for monitoring a bandwidth of the network and a transcoding means for transcoding the data if the monitored bandwidth is less than a first preset value*. Claim 1, 10, 14, and 18 recite a similar limitation. Applicants agree with the Examiner's apparent allegation that Krueger does not explicitly disclose the recited limitations. The Examiner asserts Krueger inherently discloses the recited monitoring means and transcoding means, stating since "Krueger teaches data transcoding based on the bandwidth constraints of the network," that Krueger must also determine the bandwidth constraints *using a preset value* and "to determine the constraints on the network, the *network has to be monitored*." Final Office Action, Response to Arguments, pages 4-5.

"To anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently." *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH*, 55 USPQ2d 1168 (DC SNY 2000) (citing *See Atlas Powder Co. v. Ireco Inc.*, 51 USPQ2d 1943 (Fed. Cir. 1999) (quoting *In re Scheiber*, 44 USPQ2d 1429 (Fed. Cir. 1997)); accord *Mehl/Biophile Int'l Corp. v. Milgram*, 52 USPQ2d 1303 (Fed. Cir. 1999)). "Inherent anticipation arises when 'the prior art necessarily functions in accordance with, or includes, the claimed limitations,' regardless of whether persons of ordinary skill in the art would 'recognize the inherent characteristics or functioning of the prior art.'" *Purdue Pharma L.P. v. Boehringer Ingelheim GmbH*, 55 USPQ2d at 1180 (citing *Atlas Powder Co.*, 190 F.3d at 1347 (citing *In re King*, 231 USPQ 136 (Fed. Cir. 1986)); accord *Mehl/Biophile Int'l Corp.*, 52 USPQ2d 1303, 1365 (Fed. Cir. 1999); see also *Atlas Powder Co.*, 190 F.3d at 1347-48.)

The operation of Krueger's WebTV Server 5, however, does not necessitate determining bandwidth constraints on a network, much less determining the constraints from a monitored bandwidth of the network and a preset value. For instance, Krueger may perform all of its disclosed operations with an estimated bandwidth value programmed into memories 51 and 52, and storage device 53 for use by CPU 50. See, e.g. Krueger, col. 4, line 6 – col. 5, line 11; col. 6, lines 15-29 (where Krueger may use an estimated bandwidth value to determine if the play out rate of the audio data is "*significantly higher*" than the bandwidth capabilities of the network); col. 7, lines 21-24 (where an estimated bandwidth value may be varied, or looked-up, based on the time of day and used to determine when to perform transcoding). Furthermore, Krueger does not necessitate determining bandwidth constraints using a preset value, since WebTV Server 5 determines whether to transcode audio data by examining a portion of the audio data, not using a preset value as the claims require. Krueger, Figure 5; col. 7, lines 25-63. Since it is not necessary for Krueger to determine bandwidth constraints, or to determine those constraints from a monitored bandwidth and a preset value, Krueger does not inherently anticipate the recited claim limitations. Krueger, therefore, does not anticipate claim 6, or claims 1, 10, 14, and 18, and their corresponding dependent claims.

Amended claim 1 recites *a network bandwidth monitor for monitoring a bandwidth of the network preceding each frame transmission and a transcoder for transcoding a frame ... if the monitored bandwidth for the corresponding frame transmission is less than a first preset value*. Claims 10, 14, and 18 recite similar limitations. The Examiner alleges Krueger's WebTV Server 5 discloses the recited limitations. WebTV Server 5, however, determines whether to transcode an entire audio file based on the file's header information and therefore does not disclose performing a transcoding determination for every frame, as the claims require. Krueger, col. 7, lines 32-33 and 44-63; col. 8, line 67 – col. 9, line 8; Figure 6, items 609 and 610. Krueger, therefore, does not anticipate claim 1, or claims 10, 14, and 18, or their corresponding dependent claims.

Claim 6 recites *a redundancy encoding means for redundancy encoding the transcoded data prior to transmission if the monitored bandwidth is less than a second preset value*. Claims 3, 12, 16, and 20 recite similar limitations. The Examiner alleges Krueger discloses the recited limitations. Final Office Action, page 3. The sections of Krueger cited by the Examiner, and the Krueger reference, however, do not disclose a redundancy means, much less a redundancy

encoding determination using a monitored bandwidth and a second preset value. See. e.g., abstract, col. 3, lines 1-44; col. 6, lines 15-67; Figures 1-6. Krueger, therefore, does not anticipate claim 6, or claims 3, 12, 16, and 20, or their corresponding dependent claims.

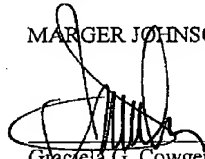
CONCLUSION

For the foregoing reasons, Applicants request reconsideration and allowance of all pending claims. The Applicants encourage the Examiner to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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RESPONSE TO
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